

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

v.

**14-CR-134-A
ORDER**

DEMARIO JAMES,

Defendant.

On October 28, 2016, the Defendant pled guilty to conspiracy to possess with intent to distribute, and to distribute, cocaine, in violation of 21 U.S.C. § 846. The Defendant has been detained for approximately 35 months while awaiting sentencing.

The Defendant has now moved for bail pending sentencing. He argues primarily that, based on certain sentencing considerations, and after applying good-time credit, he may now have been detained for a longer period of time than he would serve if he were sentenced at the low end of the anticipated Sentencing Guidelines range.

A defendant who has been convicted of a narcotics offense carrying a maximum term of imprisonment of ten years or more—as is the case here—“shall . . . be detained” pending sentencing unless (1) “an attorney for the Government has recommended that no sentence of imprisonment be imposed on the [the defendant]; and (2) the judicial officer finds by clear and convincing evidence that the [defendant] is not likely to flee or pose a danger to any other person or the community.” 18 U.S.C. §§ 3143(a)(2); 3142(f)(1)(C).

Based on the Defendant’s continued detention, it is obvious that the Government will not recommend a non-incarcerative sentence. As a result, detention pending sentencing is mandatory, and the Defendant’s motion for bail must be denied.

SO ORDERED.

Dated: July 20, 2017
Buffalo, New York

s/Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE